

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 2396 - SB 2657**

February 21, 2022

**SUMMARY OF BILL:** Makes changes to the Tennessee Occupational Safety and Health Act of 1972 (TOSHA).

Replaces the current maximum \$7,000 civil penalty against any employer who knows or has reason to know that an employment condition seriously endangers the health or safety of an employee and sets such penalty fee in accordance with 29 U.S.C. § 666, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Public Law 114-74).

Replaces the current maximum \$7,000 civil penalty against any employer who has committed a violation of OSHA and subsequently fails to correct such violation, and sets the penalty fee in accordance in 29 U.S.C. § 666, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Public Law 114-74).

Replaces the current maximum \$70,000 civil penalty against any employer who has willfully or repeatedly committed a violation of OSHA, and sets such penalty fee in accordance in 29 U.S.C. § 666, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Public Law 114-74).

Replaces the current maximum \$7,000 civil penalty against any employer violates any posting requirements, and sets such penalty fee in accordance in 29 U.S.C. § 666, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Public Law 114-74).

Enhances the penalty, from a Class C to a Class B misdemeanor, against any person who gives advance notice of any TOSHA inspection, punishable by imprisonment for not more than 6 months, a fine of not more than \$10,000, or both.

Enhances the penalty, from a Class C to a Class B misdemeanor, against a person who knowingly makes any false statement, representation or certification in any application, record, report or other document filed or required to be filed or maintained pursuant to the Act, punishable by imprisonment for not more than 6 months, a fine of not more than \$10,000, or both.

Enhances the penalty, from a Class B to a Class A misdemeanor, against a person who willfully violates a rule promulgated by the Commissioner of the Department of Labor and Workforce Development (DLWD), pursuant to the Act, punishable by imprisonment for not more than 6

**HB 2396 - SB 2657**

months, a fine of not more than \$10,000, or both. For a second or subsequent violation, it is a Class A misdemeanor, punishable by imprisonment for not more than 11 months, 29 days, a fine of not more than \$20,000, or both.

## **FISCAL IMPACT:**

### **Increase State Revenue - \$4,072,500/FY22-23 and Subsequent Years/ Occupational Safety and Health Administration**

#### **Assumptions:**

- Based on public information provided by the U.S. Department of Labor, the average penalty per violation of 29 U.S.C. § 666 is \$14,502.
- An average increase in penalty per violation of \$7,502 (\$14,502 - \$7,000).
- A 107.17 percent increase from the current penalty (\$14,502 / \$7,000). This percentage increase is accurate for repeated offense penalties as well.
- Based on information provided by the DLWD, the Department collects approximately \$3,800,000 from such violations per year.
- Pursuant to Tenn. Code Ann. § 50-3-408, all such penalty fee revenue paid to DLWD is deposited into the General Fund and earmarked for expenditure solely for use of the Tennessee Occupational Safety and Health Administration, equally between enforcement activities and safety consulting services.
- A recurring increase in state revenue to the Division of Occupational Safety and Health Administration of \$4,072,460 (\$3,800,000 x 1.0717).
- Based on information provided by the Department of Labor and Workforce Development, there have been no recent instances of the misdemeanor offenses enhanced by this legislation.

## **IMPACT TO COMMERCE:**

### **Increase Business Expenditures - \$4,072,500/FY22-23 and Subsequent Years**

#### **Assumption:**

- This legislation will result in a recurring increase in costs for businesses which fail to meet applicable TOSHA law, by an estimated \$4,072,460, beginning in FY22-23.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/jb